

1 Jack P. Burden, Esq.
Nevada State Bar No. 6918
2 **BACKUS, CARRANZA & BURDEN**
3050 South Durango Drive
3 Las Vegas, NV 89117
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5 Attorneys for Defendants,
6 *New Albertson's, Inc.*

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9
10 MICHELE A. JOSEPH, individually,)
DEMETRIUS JOSEPH, individually,) **Case No.**
11)
Plaintiffs,)
12)
vs.)
13)
NEW ALBERTSON'S, INC., a foreign)
14 corporation dba SAV-ON DRUGS; DOES I)
through X; inclusive and ROE I through X,)
15 inclusive.)
16 Defendants.)
17)

18 **PETITION FOR REMOVAL OF CIVIL ACTION**

19 Petitioner NEW ALBERTSON'S, INC., doing business as SAV-ON DRUGS by and
20 through its attorneys of Backus, Carranza & Burden, and hereby submits and respectfully shows:

21 I.

22 NEW ALBERTSON'S, INC is a Defendant in the above entitled action.

23 II.

24 The above entitled action was commenced in the Eight Judicial District Court in and for
25 Clark County, District of Nevada, and is now pending in that Court. Process was served upon

1 Petitioner through a process server on or about January 31, 2012. Copies of the Summons and
2 Complaint are attached as Exhibit "A" and Exhibit "B" respectively. The Complaint is the first
3 paper received by Petitioner by which removability may be ascertained.

4 III.

5 This Petition is filed timely pursuant to 28 U.S.C. § 1441(a).

6 IV.

7 This instant matter is a civil action over which this Court has diversity jurisdiction under
8 the provisions of 28 U.S.C. § 1332(a), and is one in which may be removed to this Court by
9 Petitioner, pursuant to the provisions of 28 U.S.C. § 1441(a).

10 V.

11 Petitioner NEW ALBERTSON'S, INC. is informed, believes and thereon alleges that
12 Plaintiff, MICHELE A. JOSEPH and DEMETRIUS JOSEPH, is and was at all times relevant
13 herein, residents of the State of Nevada.

14 VI.

15 Petitioner NEW ALBERTSON'S, INC. is and was at the time this action was commenced,
16 an Ohio Corporation with its principal place of business in Boise, Idaho.

17 VII.

18 The above-entitled civil action is for personal injuries Plaintiffs allegedly received as a
19 result of ingesting prescription medication that was not intended for and/or incorrectly dispensed
20 by the Petitioner's pharmacy which is located at the Albertson's store 1001 S. Rainbow
21 Boulevard, Las Vegas, Nevada.

22 XIII.

23 A copy of Defendant's Petition for Removal, seeking removal of the above entitled action
24 to the United States District Court, District of Nevada, together with a copy of the Summons and
25 Complaint, has been filed under a Notice of Removal with the Eighth Judicial District Court in

1 and for Clark County, Nevada.

2 IX.

3 Copies of all pleadings and papers served upon Petitioner in the above-entitled action are
4 filed herewith as Exhibits "A" and "B."

5 X.

6 This Petition is filed with this Court within thirty (30) days after Petitioner's receipt of
7 Plaintiffs' Complaint, served January 31, 2012. Exhibit "A." Plaintiffs seek general and
8 compensatory damages as well as medical special damages relating to claims for: (1) negligence;
9 (2) negligent hiring; (3) corporate negligence/vicarious liability and (4) loss of consortium.
10 Plaintiffs are claiming that they have incurred **\$35,488.16** in special damages to date. *See* Exhibit
11 "B" and Plaintiffs' February 3, 2012, Settlement Letter attached as Exhibit "C." Moreover,
12 Plaintiffs counsel has threatened to pursue all attorney's fees and costs as provided under NRS
13 18.010. *See* pg. 3 attached as Exhibit "C."

14 In circumstances in which the amount of damages sought by plaintiff is unclear, a
15 removing defendant must prove facts supporting jurisdictional amount required for diversity
16 jurisdiction by a preponderance of the evidence, i.e., that it is "more likely than not" that amount
17 in controversy exceeds \$75,000. *Simmons v. PCR Technology* 209 F.Supp.2d 1029 (2002) (citing
18 28 U.S.C.A. §§ 1332(a)1441(a)).

19 In this instant matter, it is more likely than not that the amount in controversy will exceed
20 \$75,000 though Plaintiffs do not express an exact amount of damages in their Complaint.
21 However, the preponderance of the evidence demonstrates that the amount in controversy can be
22 easily reached based on the following factors: (1) the numerous claims for relief sought, including
23 but not limited to loss of consortium by Mr. Joseph; (2) the alleged permanent and disabling
24 injuries alleged; (3) the special damages incurred to date, i.e. \$35,488.16 and Plaintiffs' counsel
25 requesting their attorney's fees and costs.

1 Therefore, it is wholly reasonable that these cumulative claims for damages meet the
2 requisite amount in controversy under 28 U.S.C. § 1332(a).

3 **PRAYER**

4 WHEREFORE, Petitioner New Albertson's, Inc. prays that the above entitled action be
5 removed from the Eighth Judicial District Court in and for Clark County, Nevada.

6
7
8 DATED this 17 day of February, 2012.

9 Respectfully Submitted,

10 **BACKUS, CARRANZA & BURDEN**

11
12 By: 

13 Jack P. Burden, Esq.
14 3050 South Durango Drive
15 Las Vegas, NV 89117
16 Attorneys for Defendant *New Albertson's, Inc.*
17
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CERTIFICATE OF SERVICE

I am a resident of and employed in Clark County, Nevada. I am over the age of 18 years and not a party to the within action. My business address is: 3050 South Durango Drive, Las Vegas, Nevada, 89117.

On Feb. 17, 2012, I served this document on the parties listed on the attached service list via one or more of the methods of service described below as indicated next to the name of the served individual or entity by a checked box:

VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada. I am "readily familiar" with the firm's practice of collection and processing correspondence by mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage fully prepaid at Las Vegas, Nevada in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

VIA FACSIMILE: by transmitting to a facsimile machine maintained by the attorney or the party who has filed a written consent for such manner of service.

BY PERSONAL SERVICE: by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf. A receipt of copy signed and dated by such an individual confirming delivery of the document will be maintained with the document and is attached.

BY E-MAIL: by transmitting a copy of the document in the format to be used for attachments to the electronic-mail address designated by the attorney or the party who has filed a written consent for such manner of service.

I declare that under penalty of perjury under the laws of the State of Nevada that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


An employee of BACKUS, CARRANZA & BURDEN

SERVICE LIST

ATTORNEYS OF RECORD	PARTIES REPRESENTED	METHOD OF SERVICE
Bradley S. Mainor, Esq. MAINOR WIRTH, LLP 1215 S. Fort Apache, Suite 120 Las Vegas, NV 89117	Plaintiff	<input type="checkbox"/> Personal service <input type="checkbox"/> Email service <input type="checkbox"/> Fax service <input checked="" type="checkbox"/> Mail service

Exhibit A


**Service of Process
Transmittal**

01/31/2012

CT Log Number 519895775

TO: Rebecca Holmquist
SuperValu Inc.
SuperValu Risk Management 70700, 250 Park Center Boulevard
Boise, ID 83726

RE: Process Served In Nevada

FOR: New Albertsons, Inc. (Domestic State: OH)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Michele A. Joseph etc. and Demetrius Joseph, etc., Pltfs. vs. New Albertson's, Inc., etc., et al., Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Complaint

COURT/AGENCY: Clark County District Court, NV
Case # A12654296C

NATURE OF ACTION: Personal Injury - Defendant's failure to dispense correct medication to the correct patron as ordered, due to which plaintiff sustained injuries

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company of Nevada, Carson City, NV

DATE AND HOUR OF SERVICE: By Process Server on 01/31/2012 at 11:50

JURISDICTION SERVED : Nevada

APPEARANCE OR ANSWER DUE: Within 20 days after this Summons is served on you, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Bradley S. Mainor
Mainor Wirth, LLP
1215 S. Fort Apache Rd. Ste. 120
Las Vegas, NV 89117
702-464-5000

ACTION ITEMS: CT has retained the current log, Retain Date: 01/31/2012, Expected Purge Date: 02/05/2012
Image SOP
Email Notification, Rebecca Holmquist rebecca.holmquist@supervalu.com

SIGNED: The Corporation Trust Company of Nevada
PER: Amy McLaren
ADDRESS: 311 South Division Street
Carson City, NV 89703
TELEPHONE: 800-592-9023

ORIGINAL

7
CW
1/37/12
1035

SUMM

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELE A. JOSEPH,
individually, DEMETRIUS
JOSEPH, individually,

Plaintiffs,

v.

NEW ALBERTSON'S, INC.,
A Foreign Corporation, d/b/a
SAV-ON DRUGS,
DOES I through X; inclusive, and
ROES I through X; inclusive,

Defendants.

CASE NO.: A-12-654296-C
DEPT. NO.: XXI

SUMMONS

NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO THE DEFENDANT: A civil Complaint has been filed by the plaintiff against you for the relief set forth in the Complaint.

NEW ALBERTSON'S, INC., a Foreign Corporation, d/b/a SAV-ON DRUGS

1. If you intend to defend this lawsuit, within 20 days after this Summons is served on you exclusive of the day of service, you must do the following:

a. File with the Clerk of this Court, whose address is shown below, a formal written response to the Complaint in accordance with the rules of the Court.

b. Serve a copy of your response upon the attorney whose name and address is shown below.

2. Unless you respond, your default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the Complaint, which could result in the taking of money or property or other relief requested in the Complaint.

///

///

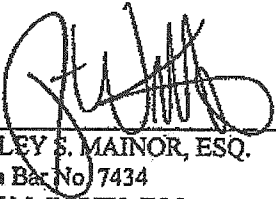
///


///


3. If you intend to seek the advice of an attorney in this matter, you should do so promptly so that your response may be filed on time.

Issued at the direction of:

STEVEN GRIERSON, CLERK OF COURT


BRADLEY S. MAINOR, ESQ.
Nevada Bar No. 7434
JOSEPH J. WIRTH, ESQ.
Nevada Bar No. 10280
1215 S. Ft. Apache Rd., Ste. 120
Las Vegas, Nevada 89117
(702) 464-5000
(702) 463-4440 Facsimile
Attorneys for Plaintiffs

By: 
Deputy Clerk
County Courthouse
200 Lewis Avenue
Las Vegas, Nevada 89155

Date  JAN 11 2012

CIVIL COVER SHEET A-12-654296-C

Clark County, Nevada

XXI

Case No. _____
(Assigned by Clerk's Office)**I. Party Information**Plaintiff(s) (name/address/phone): MICHELE JOSEPH,
DEMETRIUS JOSEPHDefendant(s) (name/address/phone): NEW ALBERTSON'S, INC.,
d/b/a SAV-ON DRUGS

Attorney (name/address/phone):

Bradley S. Mainor, Esq. / Joseph J. Wirth, Esq.

1215 S. Ft. Apache Rd., Ste. 120

Las Vegas, Nevada 89117

(702) 464-5000

Attorney (name/address/phone):

N/A

N/A

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input checked="" type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acts/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal <input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters	

III. Business Court Requested (Please check applicable category, for Clark or Washoe Counties only.)
☐ NRS Chapters 78-88
☐ Commodities (NRS 90)
☐ Securities (NRS 90)

☐ Investments (NRS 104 Art. 8)
☐ Deceptive Trade Practices (NRS 598)
☐ Trademarks (NRS 600A)

☐ Enhanced Case Mgmt/Business
☐ Other Business Court Matters

January 5, 2012

Date

Signature of initiating party or representative

Exhibit B

Electronically Filed
01/05/2012 04:01:56 PM



CLERK OF THE COURT

COMP
BRADLEY S. MAINOR, ESQ.
Nevada Bar No. 7434
JOSEPH J. WIRTH, ESQ.
Nevada Bar No. 10280
MAINOR WIRTH, LLP
1215 S. Fort Apache, Ste. 120
Las Vegas, Nevada 89117
(702) 464-5000
(702) 463-4440 Facsimile
bmainor@mainorwirth.com
jwirth@mainorwirth.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

MICHELE A. JOSEPH,)
individually, DEMETRIUS)
JOSEPH, individually,)
Plaintiffs,)
V.)
NEW ALBERTSON'S, INC.,)
A Foreign Corporation, d/b/a)
SAV-ON DRUGS,)
DOES I through X, inclusive, and)
ROES I through X, inclusive,)
Defendants.)

A - 12 - 654296 - C
CASE NO.:
DEPT. NO.: XXI

COMPLAINT

Plaintiffs, MICHELE A. JOSEPH and DEMETRIUS JOSEPH, by and through their attorneys of record, BRADLEY S. MAINOR, ESQ. and JOSEPH J. WIRTH, ESQ. of the law firm of MAINOR WIRTH allege as follows:

I.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. That at all times relevant hereto, Plaintiff, MICHELE A. JOSEPH, is and was a resident of the County of Clark, State of Nevada.

2. That at all time relevant hereto, Plaintiff, DEMETRIUS JOSEPH, is and was a resident of the County of Clark, State of Nevada.

3. That Plaintiffs are informed and believe, and thereupon allege, that Defendant, DOE EMPLOYEE I, is, and at all times relevant hereto was, a resident of the County of Clark, State of Nevada.

4. That Plaintiffs are informed and believe, and thereupon allege, that Defendant NEW ALBERTSON'S, INC., d/b/a SAV-ON DRUGS, is, and at all times relevant hereto was, a foreign Corporation duly licensed under the laws of the State of Nevada, and doing business in Clark County, State of Nevada.

5. At all times relevant herein, the Defendants Does I through X, inclusive, were and are now pharmaceutical personnel and/or employees of SAV-ON DRUGS, holding themselves out as duly licensed to practice or conduct their professions or business under and by virtue of the laws of the State of Nevada and are not engaged in the practice of their professions and/or business in the State of Nevada; the true names and capacities, whether individual, corporate, associate or otherwise of Defendants DOES I through X inclusive, and ROE CORPORATIONS I through X, inclusive, are presently unknown to Plaintiffs, who therefore sue those Defendants by such fictitious names; the Plaintiffs are informed and believe, and thereupon allege that each of the Defendants sued herein as DOES I through X are responsible in some manner for the events and happenings herein referred to, which thereby proximately caused the injuries and damages to the

1
2 Plaintiffs as alleged herein; that when the true names and capacities of such Defendants become
3 known, Plaintiffs will ask leave to amend this Complaint to insert the true names, identities and
4 capacities, together with proper charges and allegations.

5 6. At all relevant times, Defendants, ROE CORPORATIONS, I through X, were and
6 now are corporations, firms, partnerships, associations, other legal entities involving the dispensing
7 of medication to the Plaintiffs herein; that the true names, identities or capacities whether
8 individual, corporate, associate or otherwise of the Defendants, ROE CORPORATIONS I through
9 X, inclusive are presently unknown to Plaintiffs, who therefore sue said Defendants by such
10 fictitious names; that the Plaintiff are informed and believe and thereupon allege that each of the
11 Defendants sued herein as ROE CORPORATIONS I through X are responsible in some manner for
12 the events and happenings herein referred to, which thereby proximately caused the injuries to
13 Plaintiff MICHELE JOSEPH alleged herein; that when their true names and capacities of such
14 Defendants become known, Plaintiffs will ask leave of this Court to amend this Complaint to insert
15 the true name, identities and capacities, together with proper charges and allegations.

16
17
18 7. At all times relevant herein, Defendants, and each of them, were the agents,
19 ostensible agents, servants, employees, employers, partners, co-owners and/or joint venturers of
20 each other and of their co-defendants, and were acting within the color, purpose and scope of their
21 employment, agency, ownership and/or joint ventures and by reason of such relationships the
22 Defendants, and each of them, are vicariously and jointly and severally responsible and liable for
23 the acts and/or omissions of their co-Defendants.

24
25 8. The Defendants, and each of them, authorized, approved, consented to and/or
26 ratified the act of its agents, servants, employees, co-owners and each other and as a result thereof
27 are liable for damages.
28

1
2 9. Plaintiffs' claims arise out of the errors, mistakes and carelessness of the Defendants
3 by wrongfully and negligently dispensing Lisinopril (a high blood pressure medication) in lieu of
4 Plaintiff MICHELE JOSEPH's true and actual prescription for Soma (a muscle relaxant/pain
5 reliever). As a result, Plaintiff MICHELE JOSEPH ingested the Lisinopril, and suffered severe
6 injuries due to the same.
7

8 II.

9 FIRST CAUSE OF ACTION
10 Negligence

11 10. Plaintiffs repeat, reallege, and incorporate by reference Paragraphs 1 through 9
12 above as if fully set forth herein.

13 11. On or about January 2, 2011, Plaintiff MICHELE JOSEPH's physician's office
14 contacted the Sav-On Pharmacy, located inside the Albertson's store at 1001 S. Rainbow
15 Boulevard, Las Vegas, NV 89128, to authorize a refill of Plaintiff MICHELE JOSEPH's
16 prescription for Soma.
17

18 12. On or about January 14, 2011, Plaintiff DEMETRIUS JOSEPH (Plaintiff
19 MICHELLE JOSEPH's spouse) went to the Sav-On to retrieve MICHELE's prescription. He was
20 negligently and carelessly given a prescription of the drug, Lisinopril, which was issued to a
21 Michael (not Michele) Joseph, by one of Sav-On's pharmacists and/or pharmaceutical employees,
22 Defendant DOE EMPLOYEE. Plaintiff MICHELE ingested one of the pills and as the medication
23 was meant to treat high blood pressure—a condition she did not have—she subsequently became ill
24 and required medical treatment for her injuries.
25
26

27 13. Defendants, individually and by and through its employees under its direction and
28 control, failed to properly supervise, monitor, review and/or otherwise implement quality control

1
2 procedures to prevent the unauthorized and/or incorrect dispensing of prescription medication. If
3 appropriate systems were in place, or alternatively proper quality control measure were instituted,
4 proper procedures would have been followed and the improper prescription would not have been
5 given to Plaintiff MICHELE JOSEPH. Consequently, Plaintiff MICHELE JOSEPH would not
6 have suffered injuries as a result of the mix up in prescriptions.
7

8 14. But for the failure of Defendants, and each of them, to properly dispense the correct
9 medication to the correct patron as ordered, and the lack of appropriate training and supervision,
10 Plaintiff MICHELE JOSEPH would not have suffered injuries.
11

12 15. At said time and place, Defendants, and each of them owed a duty to ensure the
13 proper dispensing of medication to its customers.

14 16. In complete disregard of this duty, Defendants, and each of them, failed to ensure
15 that the proper medication was dispensed to the proper recipient, in an extremely reckless,
16 negligent and careless manner.
17

18 17. Defendants, and each of them, willfully and wantonly disregarded the rights and
19 safety of Plaintiff MICHELE JOSEPH.

20 18. Defendant, DOE EMPLOYEE's failure to properly dispense the medication caused
21 Plaintiff MICHELE to be injured.
22

23 19. As a direct and proximate result of the negligence of Defendants, and each of them,
24 Plaintiff MICHELE was seriously injured and caused to suffer great pain of body and mind, all or
25 some of which may be permanent and disabling in nature, aggravating to their general and
26 compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).
27

28 20. As a further direct and proximate result of the negligence of Defendants, and each of
them, Plaintiff MICHELE incurred expenses for medical care, treatment and expenses incidental

1
2 thereto, and Plaintiff MICHELE may be required in the future to incur expenses for medical care
3 and treatment.

4 21. That Plaintiffs have been required to retain the services of MAINOR WIRTH to
5 prosecute this action and are entitled to reasonable attorney's fees and costs incurred herein.
6

7 III.

8 SECOND CAUSE OF ACTION

9 *Negligence and Negligent Hiring and Supervision*

10 22. Plaintiffs repeat, reallege, and incorporate by reference Paragraphs 1 through 21
11 above as if fully set forth herein.

12 23. That Defendant, New Albertson, Inc., d/b/a Sav-On drugs, owed a duty to Plaintiffs
13 to employ competent pharmaceutical staff and personnel, including clerks, supervisors, pharmacists
14 and managers adequately trained to appropriately dispense prescriptions pursuant to physician
15 authorized orders.
16

17 24. As a result of the unauthorized, incorrect and inadequate pharmaceutical service or
18 lack thereof of the Defendants, the Defendants breached their duty to the Plaintiffs by failing to
19 employ personnel adequately trained to protect its customers from foreseeable harm, resulting in
20 Plaintiff MICHELE JOSEPH's injuries.
21

22 25. As a proximate result of the negligence of the Defendants, and each of them,
23 Plaintiff MICHELE JOSEPH was given high blood pressure medication in lieu of her muscle
24 relaxant which caused Plaintiff MICHELE JOSEPH's injuries.
25

26 26. As a direct and proximate result of the negligence of Defendants, and each of them,
27 Plaintiff MICHELE JOSEPH was seriously injured and caused to suffer great pain of body and
28 mind, all or some of which may be permanent and disabling in nature, aggravating to their general

1
2 and compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

3 27. As a further direct and proximate result of the negligence of Defendants, and each of
4 them, Plaintiff MICHELE JOSEPH incurred expenses for medical care, treatment and expenses
5 incidental thereto, and Plaintiff MICHELE JOSEPH may be required in the future to incur
6 expenses for medical care and treatment.
7

8 28. That Plaintiffs have been required to retain the services of MAINOR WIRTH to
9 prosecute this action and are entitled to reasonable attorneys' fees and costs incurred herein.
10

11 IV.

12 THIRD CAUSE OF ACTION
13 *Corporate Negligence/Vicarious Liability*

14 29. Plaintiffs repeat, reallege and incorporate by reference paragraphs 1 through 28
15 above as if fully set forth herein.

16 30. Defendant, New Albertson's, Inc., d/b/a Sav-On Drugs' employees were acting in
17 the scope of their employment, under Defendant's control, and in furtherance of Defendant's
18 interest at the time their actions ultimately caused injuries to Plaintiff MICHELE JOSEPH.
19

20 31. Defendant, New Albertson's, Inc., d/b/a Sav-On Drugs, is vicariously liable for
21 damages resulting from their agents' and/or employees' negligent actions and/or omissions against
22 Plaintiff, during the scope of their employment.
23

24 32. As a result of the negligent acts and/or omissions of Defendant New Albertson's,
25 Inc., d/b/a Sav-On Drugs' employees, Defendant breached its duty to the Plaintiffs by failing to
26 employ professional personnel and employees adequately trained to protect its customers from
27 foreseeable harm.
28

33. As a direct and proximate result of the negligence of Defendants, and each of them,

1
2 Plaintiff MICHELE JOSEPH was seriously injured and caused to suffer great pain of body and
3 mind, all or some of which may be permanent and disabling in nature, aggravating to their general
4 and compensatory damages in an amount in excess of Ten Thousand Dollars (\$10,000.00).

5 34. As a further direct and proximate result of the negligence of Defendants, and each of
6 them, Plaintiff MICHELE JOSEPH incurred expenses for medical care, treatment and expenses
7 incidental thereto, and Plaintiff MICHELE JOSEPH may be required in the future to incur
8 expenses for medical care and treatment.
9

10 35. That Plaintiffs have been required to retain the services of MAINOR WIRTH to
11 prosecute this action and are entitled to reasonable attorneys' fees and costs incurred herein.
12

13 V.

14 FOURTH CAUSE OF ACTION
15 Loss of Consortium

16 36. Plaintiffs repeat, reallege, and incorporate by reference Paragraphs 1 through 35
17 above as if fully set forth herein.
18

19 37. Plaintiff DEMETRIUS JOSEPH, as the lawful husband of the Plaintiff MICHELE
20 JOSEPH, was and is entitled to the society, comfort, affection, services, companionship and
21 consortium of his wife, MICHELE JOSEPH.

22 38. As a direct and proximate result of the negligence and carelessness of said
23 Defendants, and each of them, Plaintiff DEMETRIUS JOSEPH, has been denied the society,
24 comfort, affection, services, companionship and consortium of his wife, MICHELE JOSEPH.
25

26 39. Plaintiffs have been required to retain the services of MAINOR WIRTH to
27 prosecute this action and are entitled to reasonable attorney's fees and costs incurred herein.
28

1
2 WHEREFORE, Plaintiffs pray judgment of this Court as follows:

- 3 1. General damages in an amount in excess of \$10,000.00;
4 2. Medical and incidental expenses incurred and to be incurred;
5 3. Costs of suit, reasonable attorney fees, interest incurred herein; and
6 4. For other and further relief as is just and proper.
7

8 DATED this 5th day of January, 2012.

9 MAINOR WIRTH, LLP

10
11 
12 BRADLEY S. MAINOR, ESQ.

Nevada Bar No. 7434

13 JOSEPH J. WIRTH, ESQ.

Nevada Bar No. 10280

14 1215 S. Fort Apache Rd. Ste. 120

15 Las Vegas, Nevada 89117

16 (702) 464-5000

(702) 463-4440 Facsimile

17 Attorneys for Plaintiffs
18
19
20
21
22
23
24
25
26
27
28



CT Corporation

**Service of Process
Transmittal**

01/31/2012

CT Log Number 519895775

TO: Rebecca Holmquist
SuperValu Inc.
SuperValu Risk Management 70700, 250 Park Center Boulevard
Boise, ID 83726

RE: Process Served In Nevada

FOR: New Albertsons, Inc. (Domestic State: OH)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Michele A. Joseph etc. and Demetrius Joseph, etc., Pltfs. vs. New Albertson's, Inc., etc., et al., Dfts.
Name discrepancy noted.

DOCUMENT(S) SERVED: Summons, Cover Sheet, Complaint

COURT/AGENCY: Clark County District Court, NV
Case # A12654296C

NATURE OF ACTION: Personal Injury - Defendant's failure to dispense correct medication to the correct patron as ordered, due to which plaintiff sustained injuries

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company of Nevada, Carson City, NV

DATE AND HOUR OF SERVICE: By Process Server on 01/31/2012 at 11:50

JURISDICTION SERVED : Nevada

APPEARANCE OR ANSWER DUE: Within 20 days after this Summons is served on you, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Bradley S. Mainor
Mainor Wirth, LLP
1215 S. Fort Apache Rd. Ste. 120
Las Vegas, NV 89117
702-464-5000

ACTION ITEMS: CT has retained the current log, Retain Date: 01/31/2012, Expected Purge Date: 02/05/2012
Image SOP
Email Notification, Rebecca Holmquist rebecca.holmquist@supervalu.com

SIGNED: The Corporation Trust Company of Nevada

PER: Amy McLaren

ADDRESS: 311 South Division Street
Carson City, NV 89703

TELEPHONE: 800-592-9023

Exhibit C

MAINOR WIRTH

I N J U R Y L A W Y E R S

Bradley S. Mainor, Esq.

Joseph J. Wirth, Esq.

Daniel F. Lippmann, Esq.

February 3, 2012

Via Certified Mail:
7010 2780 0002 2089 1807

Sedgwick CMS
Attn: Shelley Hippen
11000 Prairie Lakes Dr.
Eden Prairie, MN 55344

Re: Your Insured: Albertsons, Inc./ Sav-On Pharmacy
Claimants: Michele Joseph
Our Case No.: 200113
Date of Loss: January 14, 2011

Dear Ms. Hippen,

Enclosed are the materials substantiating our client's claim arising out of an incident that occurred on January 14, 2011.

LIABILITY

This incident occurred on Friday, January 14, 2011. Mrs. Joseph was the recipient of medication that was **NOT** prescribed to her. Pharmacists owe a duty to care to the people whose prescriptions they fill. A Pharmacist has a degree and holds himself out as having the training and ability to accurately fill prescriptions. Pharmacists are therefore held to a high duty of care that requires absolute accuracy in order processing. In this case, there is no disputing the following:

- Savon owed Mrs. Joseph a duty of care
- Savon breached that duty of care by giving her the wrong medication
- The breach of that duty of care caused Mrs. Joseph damages
- Savon is responsible for causing those damages

The damages are outlined in the following section.

1215 S. Ft. Apache Road, Suite 120, Las Vegas NV 89117
PHONE 702.464.5000 FAX 702.463.4440
Tax I.D. #27-5490951

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INJURIES

- ◆ CONGESTIVE HEART FAILURE
- ◆ HYPOXIA
- ◆ DIZZINESS
- ◆ HEADACHES
- ◆ COUGHING
- ◆ SHORTNESS OF BREATH
- ◆ LIGHTEADNESS

MEDICAL EXPENSES

#	Provider Name(s):	Service Date(s):	Billing Amount(s):
1	City of Las Vegas-EMS	01/14/2011	Total: 838.16
2	Mountainview Hospital	01/14/2011-01/17/2011	Total: 30,635.00
3	Fremont Emergency Services	01/14/2011	Total: 722.00
4	Radiology Specialists, Ltd.	01/14/2011-02/11/2011	Total: 185..00
5	Mountainview Hospital	02/01/2011	Total: 3,108.00
SUBTOTAL:			\$35,488.16

MEDICAL SUMMARY

Following the ingestion of Lisinopril, Mrs. Joseph started experiencing coughing, dizziness, breath shortages and felt like she was going to faint. Due to her symptoms, Mr. Joseph called 911 for an ambulance to respond to their home. An emergency response team from City of Las Vegas Fire and Rescue responded to the scene. They noted that the patient's chief complaint was drug overdose. Based on the emergency response team's assessment, it was noted that Mrs. Joseph was having a medication reaction. The response team treated her under general patient care protocol and transported her to Mountainview Hospital.

Upon arrival to Mountainview Hospital, Michele was evaluated by Wenlan Cheng, M.D. Dr. Cheng noted that Mrs. Joseph had not had similar symptoms previously. Dr. Cheng ordered lab work, a chest x-ray and an EKG be performed. The chest x-ray revealed findings that were compatible with congestive heart failure. Due to her prior heart conditions and the presence of Hypoxia, Dr. Cheng ordered Mrs. Joseph to be admitted for observation. Mrs. Joseph stayed in the hospital until January 17, 2011, at which time she was discharged in stable condition.

On February 1, 2011, Michele presented back to Mountainview Hospital to have a CT

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scan of the head performed. At the time of the initial hospitalization, Mrs. Joseph was placed on blood thinners that were causing headaches. Based on her complaint of ongoing headaches, her doctor recommended that she have this particular test performed.

DEMAND

Mrs. Joseph's medical expenses are reasonable and the injuries well documented. It is obvious that our client sustained injuries as a result of this incident. Her life has been affected in numerous ways, including the obvious pain, suffering, inconvenience, and aggravation she has suffered.

You have the opportunity to settle this case within your insured's policy limits. If the case is not settled, we will move forward with the litigation process and will pursue the full value of this case in addition to attorney's fees and costs as provided under NRS 18.010 which states:

"It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph . . . to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public."

We look forward to hearing from you with regard to my client's demand.

Sincerely,

A handwritten signature in black ink, appearing to read 'BSM', followed by a long horizontal line extending to the right.

Bradley S. Mainor, Esq.
MAINOR WIRTH, LLP

BSM/yag
Enclosures (as stated)
cc: Michele Joseph
Jack P. Burden, Esq.